



Women in Combat: Issues for Congress

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Summary

In approximately 10 years of combat operations in Iraq and Afghanistan, over 283 thousand female members have been deployed, over 800 have been wounded and over 130 have died. According to the Department of Defense (DOD), as of February 29, 2012, over 20,000 female members have or are serving Afghanistan and Iraq. (U.S. forces were out of Iraq as of Dec. 2011.) On numerous occasions women have been recognized for their heroism, two earning Silver Star medals. This outcome has resulted in a renewed interest in Congress, the Administration, and beyond in reviewing and possibly refining or redefining the role of women in the military.

The expansion of roles for women in the armed forces has evolved over decades. Women are not precluded from serving in any military unit by law today. (Past laws that precluded women from serving on board military aircraft and ships assigned combat missions were repealed in the early 1990s.) DOD policy restricting women from serving in ground combat units was most recently modified in 1994. Under this policy, women may not be assigned to units, below the brigade level, whose primary mission is to engage in direct combat on the ground. Primarily, this means that women are barred from infantry, artillery, armor, combat engineers, and special operations units of battalion size or smaller. Since there are no laws precluding such service, changes made in assigning women are only controlled under current policies which may be modified by the Administration and DOD.

In 2006, Congress enacted language prohibiting any change in existing policies without the Secretary of Defense first notifying Congress of such changes followed by a waiting period. In 2010, the Navy notified Congress that it was modifying its policy to allow women to serve as permanent crew members aboard submarines. The Navy announced women will begin being assigned to submarines in November or December of 2011.

Recent changes in Army doctrine have in many ways called into question the ground exclusion policy, or at least, the services' adherence to it. This is the result particularly from the policy of collocating support units (to which women are assigned) with combat units, along with adapting to the unusual (nonlinear) warfare tactics encountered in Iraq and Afghanistan, and the utilization of women in what some view as new nontraditional roles in Iraq and Afghanistan (for example, the "Lioness" program, which employed women to search Muslim women, and the emerging all-female Cultural Support Teams)

The FY2009 Duncan Hunter National Defense Authorization Act contained language establishing the Military Leadership Diversity Commission. Among its duties, the Commission was to conduct a study and report on the "establishment and maintenance of fair promotion and command opportunities for ethnic- and gender-specific members of the Armed Forces at the O-5 (Lieutenant Colonel for Army, Marine Corps and Air Force, and Commander for Navy and Coast Guard) grade level and above." Among its recommendations, the Commission stated that DOD should take deliberate steps to open additional career fields and units involved in direct ground combat. Such a move would essentially limit or repeal, in its entirety, the 1994 DOD policy regarding women serving in combat units. In February 2012, DOD announced modifications to this policy.

Women's right supporters contend that the exclusionary policy prevents women from gaining leadership positions and view expanding the roles of women as a matter of civil rights. Critics view such changes as potentially damaging to military readiness.

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Issue

Laws prohibiting women from serving in combat units were repealed in the early 1990s. However, since then, it has been U.S. military *policy* to restrict women from certain units and military occupations, especially ground combat units. In recent years, efforts have been underway to remove these restrictions. Opponents have questioned the need to modify or remove these restrictions and the purposes for doing so. Under the Constitution, Congress has the authority to make the rules and regulations for the military.¹

According to Defense Department data, as of February 29, 2012, a total of 183,714 service members are deployed (20,062 were female, or 10.92%). During Operation Iraqi Freedom, 623 female service members were wounded in action and 110 female service members died, or 1.95% and 2.49% of those who were wounded or died, respectively. The numbers of wounded in action and deaths for Operation New Dawn² (September 1, 2010 through March 5, 2012) were 301 wounded (12 were females or 3.99%) and 66 deaths (all males), respectively. For Operation Enduring Freedom, 232 female service members were wounded and 34 female service members died, or 1.50% and 1.79%, respectively.

For all three Operations, although women totaled over 10% of those deployed, they accounted for 1.82% of those wounded and 2.26% of those who died. The majority of deaths (78.70%) were categorized as “hostile.” Observers have stated that moving women into the combat arms will very likely increase the proportion of women who are wounded and/or die during hostilities.

Background

The history of women serving with or in the military varies by service.³ In 1908, Congress enacted language which lead to the creation of the Navy Nurse Corps⁴ and in 1942 Congress opened the Naval Reserve to women.⁵ In 1918, the Secretary of the Navy allowed women to sign up for clerical duties in the Marine Corps. In 1918, the Secretary of the Navy allowed women to enroll for clerical duty.⁶ The Marine Corps Women’s Reserve was established in 1943. Women were assigned as lighthouse keepers in the 1830s and in 1942, the Coast Guard created the women reserves know as SPARs. On May 14, 1942, the Women’s Army Auxiliary Corps was created “for noncombatant service with the Army of the United States for the purpose of making available to the national defense when needed the knowledge, skill, and special training of the

¹ Congress has the authority “To make Rules for the Government and Regulation of the land and naval Forces.” U.S. Constitution, Article 1, Section 8, clause 14.

² Operation Iraqi Freedom was renamed Operation New Dawn, on December 1, 2010. On December 18, 2011, the last U.S. forces left Iraq.

³ Parts of this report are based on an earlier CRS Issue Brief, *Women in the Armed Forces* by David F. Burrelli, November 14, 1998.

⁴ P.L. 115; 35 Stat. 146; May 13, 1908.

⁵ P.L. 689; 56 Stat. 730; July 30, 1942.

⁶ See: http://www.womenmarines.org/wm_history.aspx

women of this Nation.”⁷ Over one year later, the Women’s Army Corps (WAC) was made a part of the regular Army on a temporary basis.⁸

In 1948, Congress made women a permanent part of the military services.⁹ The Women’s Armed Services integration Act of 1948 limited the proportion of women in the military to two percent of the enlisted force and 10% of officers. This limit was repealed in 1967.¹⁰

In the years that followed the passage of the Women’s Integration Act of 1948, women made up a relatively small proportion of the armed forces—less than one percent until 1973. By 1997, women accounted for 13.6% of the active duty endstrength, increasing to 14.5% by September, 2011.

Two major factors led to the expansion of the role of women in the armed forces. First, after the end of the draft and the beginning of the All-Volunteer Force in December 1973, the military services had difficulty in recruiting and retaining enough qualified males, thereby turning attention to recruiting women.¹¹ Second, the movement for equal rights for women, particularly in the 1960s and 1970s, led to demands for equal opportunity in all fields, including national defense, and a gradual removal of the restrictions against them.

In 1974, the age requirement for women enlisting without parental consent was made the same as for men.¹² In the next year, legislation was enacted that allowed women to be admitted to the three service academies.¹³

In 1977, Congress directed the Secretary of Defense to submit to Congress a definition of the term “combat” and recommendations for expanding job classifications for female members of the armed forces.¹⁴

In 1978, women were permitted to be assigned permanent duty on noncombatant Navy ships, and up to six months of temporary duty on other ships.¹⁵

The Senate Armed Services Committee commented on women in combat in its report concerning the reinstitution of registration for the Selective Service in 1979. Citing military and other reasons for differential treatment of men and women by Selective Service, the Committee stated:

⁷ Public Law 554, 56 Stat. 278, May 14, 1942.

⁸ “That there is hereby established in the Army of the United States, for the period of the present war and for six months thereafter or for such shorter period as the Congress by concurrent resolution or the President by proclamation shall prescribe, a component to be known as the ‘Women’s Army Corps’.” Public Law 110; 57 Stat. 371; July 1, 1943.

⁹ Public Law 625; 62 Stat. 356; June 12, 1948: “Women’s Armed Services Integration Act of 1948.”

¹⁰ P.L. 90-130; 81 Stat. 374; November 8, 1967.

¹¹ Janowitz, Morris, and Charles C. Moskos, Five Years of the All-Volunteer Force: 1973-1978, *Armed Forces and Society*, V, February 1979: 171-218.

¹² P.L. 93-290; 88 Stat. 173; May 24, 1974. Prior to enacting this law, males who were not less than 17 years of age could enlist, females must have been at least 18 years of age.

¹³ P.L. 94-106; 89 Stat. 537; October 7, 1975. Women had already been admitted to the Coast Guard and Merchant Marine Academies by administrative action.

¹⁴ P.L. 95-97; 91 Stat. 327; July 30, 1977.

¹⁵ P.L. 95-485; 92 Stat. 1623; October 20, 1978.

The committee feels strongly that it is not in the best interest of our national defense to register women for the Military Selective Service Act, which would provide needed military personnel upon mobilization or in the event of a peacetime draft for the armed forces.¹⁶

Confusion over the role of women became evident during Operation Urgent Fury. On October 25, 1983, U.S. service personnel were sent to the island nation of Grenada to rescue Americans. Four U.S. military police women arrived shortly after the invasion and were promptly sent back to Fort Bragg, N.C.¹⁷ At Fort Bragg, Major General Trobaugh had removed all the females from the invasion Task Force. Following an intervention by Lieutenant General Mackmull, women were reattached to the unit and finally deployed to Barbados on November 2, 1983, to serve with the lead element of the Task Force while the rest of the Task Force deployed to Grenada the same day.¹⁸

In February 1988, the Department of Defense adopted a “risk rule” that excluded women from noncombat units or missions if the risks of exposure to direct combat, hostile fire, or capture were equal to or greater than the risks in the combat units they support. This rather subjective criteria permitted women to be assigned to noncombat units or positions if the risk was less than comparable to the combat units with which they were associated. In 1988, the General Accounting Office (now the Government Accountability Office, GAO) noted that a primary barrier to the expansion of the number of women in the services was that women were not allowed in most combat jobs, and were also barred from many combat-related jobs.¹⁹ The GAO reported that approximately one-half of the active duty military positions were opened to women.²⁰

Following Operation Desert Storm and the political fallout concerning sexual harassment and assault at the Navy’s 1991 Tailhook convention in Las Vegas,²¹ efforts to expand the assignment of women were renewed. Legislation enacted in 1991 called for the repeal of the statutory limitations on the assignment of women in the armed forces to combat aircraft and naval vessels, and, the establishment of a commission on the assignment of women in the armed forces.²² On November 15, 1992, the Commission issued its report.²³ Among its many recommendations were the following (verbatim):

- DOD should establish a policy to ensure that no person who is best qualified is denied access on the basis of gender to an assignment that is open to both men

¹⁶ U.S. Congress, Senate, Committee on Armed Services, *Requiring Reinstitution of Registration For Certain Persons Under the Military Selective Service Act, and For Other Reasons*, Rept. 96-226, 96th Cong., 1st Sess., June 19, 1979.

¹⁷ See: http://www.history.army.mil/html/museums/showcase/women/awm_text.html

¹⁸ Raines, Edgar F., Jr., *The Rucksack War: U.S. Army Operational Logistics in Grenada, 1983*, Center of Military History: Washington, D.C., 2010: 494.

¹⁹ Combat jobs include those that directly confront and engage the enemy, such as infantry; combat-related jobs include those that support combat units in the field, such as those in support positions with combat engineers, as well as infantry and tank support units, including units that transport fuel, ordinance and ammunition, for example.

²⁰ U.S. General Accounting Office, *Women in the Military More Military Jobs Can be Opened Under Current Statutes*, GAO/NSIAD-88-222, September 1988: 3. See also: U.S. General Accounting Office, *Women in the Military Impact of Proposed Legislation to Open More Combat Support Position and Unites to Women*, GAO/NSIAD-88-197BR, July 1988.

²¹ Boyer, Peter J., *Admiral Boorda’s War*, *The New Yorker*, September 16, 1996: 68.

²² P.L. 102-190; 105 Stat. 1365; December 5, 1991.

²³ Presidential Commission on the Assignment of Women in the Armed Forces, *Report to the President*, November 15, 1992.

and women. As far as it is compatible with the above policy, the Secretary of Defense should retain discretion to set goals that encourage the recruitment and optimize the utilization of women in the Services, allowing for the requirements of each Service.

- Military readiness should be the driving concern regarding assignment policies; there are circumstances under which women might be assigned to combat positions.
- The sense of the Commission is that women should be excluded from direct land combat units and positions. Furthermore the Commission recommends that the existing service policies concerning direct land combat exclusion be codified. Service Secretaries shall recommend to the Congress which units and positions should fall under the land combat exclusions.
- In view of the evidence gathered by this Commission with regard to the potential consequences of assigning women to combat positions, current DOD and Service policies with regard to Army, Air Force and Navy aircraft on combat missions should be retained and codified by means of the reenactment of Section 8549 of Title 10, U.S. Code which was repealed by P.L. 102-190, Section 531 for the Air Force, and reenactment of the provisions of 10 U.S.C. Section 6015 prohibiting women from assignment to duty on aircraft engaged in combat missions, which was repealed by P.L. 102-190 for the Navy, and codification of Army policy.
- Repeal existing laws and modify Service policies for servicewomen to serve on combatant vessels except submarines and amphibious vessels.
- Retain the DOD Risk Rule [as explained above] as currently implemented. Navy policies which implement the Risk Rule should be modified to reflect the changes made [in the above recommendation].

In addition, the Commission recommended retaining the current policies prohibiting the assignment of women in special operations forces.

On April 28, 1993, then-Secretary of Defense, Les Aspin, released a memorandum directing the Services to open more positions to women and establishing an implementation committee to review and make recommendations on such implementation issues.

Several months later, Congress enacted language that:

- repealed the prohibition on women serving on combatant vessels and aircraft;
- required the Secretary of Defense to ensure occupational performance standards were gender-neutral; and
- required the Secretary of Defense to notify the House and Senate Armed Services Committees 90 days before any policy changes were to be made concerning the assignment of women to ground combat roles, and, required the Secretary of Defense to notify these committees 30 days prior to the opening of any “combatant unit, class of combatant vessel, or type of combat platform” to women.²⁴

²⁴ P.L. 103-160; 107 Stat. 1659 et seq.; November 30, 1993, see also Legislative History.

Ground Combat

On January 13, 1994, Secretary Aspin lifted the 1988 risk rule.²⁵ Effective October 1, 1994, he approved a new assignment rule:

A. Rule. Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade²⁶ level whose primary mission is to engage in direct combat on the ground, as defined below.

B. Definition. Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel. Direct ground combat takes place well forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, or shock effect.

Secretary Aspin further specified that these assignment policies and regulations may include the following restrictions on the assignment of women:

- where the Service Secretary attest that the cost of appropriate berthing and privacy arrangements are prohibitive;
- where units and positions doctrinally required to physically collocate and remain with direct combat units that are closed to women;
- where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and
- where job related physical requirements would necessarily exclude the vast majority of women Service members.

Supporters of these changes noted that they would open more opportunities for women in the services. Critics saw these changes as putting women at greater risk since they removed the 'substantial risk' of being captured from the definition of ground combat.

Subsequently, situations evolved that highlighted the roles performed by women in the military relative to the policy prohibiting them from combat units. First, Operation Iraqi Freedom (OIF) began on March 20, 2003. This was the first large-scale mobilization of U.S. troops since Operation Desert Shield/Desert Storm in the early 1990s. The nonlinear battlefields of Iraq blurred the distinctions between forward and rear operating areas—as the story of the PFC Jessica Lynch ambush showed.²⁷

²⁵ U.S. Department of Defense, Office of the Secretary of Defense, Memorandum: Direct Ground Combat Definition and Assignment Rule, January 13, 1994.

²⁶ A brigade or its equivalent is a unit of approximately 3,000-5,000 persons.

²⁷ Center for Military Readiness, Policy Analysis, Women in Land Combat, report no. 16, April 2003. The debate was reinvigorated following the reports, accurate or otherwise, of the capture of PFC Jessica Lynch and the death of PFC Lori Ann Piestewa following an ambush after their unit took a wrong turn in Iraq; the efforts to use such reports to advance a particular policy or agenda; and, the debate over media coverage of the incident. See: Schmidt, Susan, and Vernon Loeb, 'She was Fighting to the Death', Details Emerging of W. Va. Soldier's Capture and Rescue., *Washington Post*, April 3, 2002: A1, Scarborough, Rowan, Crash Caused Lynch's 'Horrific Injuries,' *Washington Times*, July 9, 2003: 1, O'Bierne, Kate, An Army of Jessicas, *National Review*, May 19, 2003, Ritea, Steve, Jessica Lynch's Story: A Little Too Perfect?, *American Journalism Review*, <http://www.ajr.org/article.asp?id=3091>

Second, for rotation, training, readiness and other reasons, the Army moved to a “Modular Redesign.”²⁸ Under this concept, Brigade Combat Teams (BCT) serve as the basic large tactical combat unit of the Army. These BCT are supported by Multi-Functional Support Brigades which could be collocated with the BCTs. These support brigades included noncombat personnel, many of whom were women. Such collocation appeared to some to be at odds with the 1994 policies on the assignment of women.

Third, because of the nonlinear and irregular nature of the battle in Iraq and Afghanistan, the definition of ‘direct ground combat’ in the 1994 policy became less useful: what did ‘well forward’ mean on a nonlinear battlefield and how useful was the ‘primary mission’ criteria when noncombat units regularly engage in direct combat to carry out their mission? In this environment, the Army and Marine Corps utilized women to search Iraqi females for weapons, and to patrol with foot soldiers, usually in door-to-door-type operations.²⁹ Also, women have been involved in convoy escort missions that came under fire,³⁰ as well as have served in female engagement teams which help units deal with female locals while operating in Afghan villages.³¹

Concerns over the collocation and forward deployment of support units resulted in language being included in the House version of the National Defense Authorization Act for Fiscal Year 2006. Under this law, if the Secretary of Defense proposes to make any change to the 1994 ground combat exclusion policy, or open or close military career fields that had been in effect since May 18, 2005, the Secretary must first notify Congress and then wait 30 days (while Congress is in session) before implementing any such change.³² In addition, the Secretary of Defense was directed to submit a report concerning the Secretary’s review of the current and future implementation of the policy regarding the assignment of women with particular attention to the Army’s unit modularization efforts and associated assignment policies.

In a 2007 report, the RAND Corporation noted that while the Army was complying with the DOD assignment policy, it may not have been complying with the separate Army assignment policy.³³ Further, the report stated “[w]e find considerable evidence that support units are collocated with direct combat units if the definition of collocation is based purely on proximity. However, if the definition of collocation is based on interdependency *and* proximity, the evidence is inconclusive.”³⁴ The report noted that hundreds of female Army members had received a Combat Action Badge suggesting that regardless of what the report concludes, the Army recognizes that females have been in combat.³⁵

²⁸ CRS Report RL32476, *U.S. Army’s Modular Redesign: Issues for Congress*, by Andrew Feickert.

²⁹ “‘Lioness’ is an up-close look at the evolving role of women in the U.S. Military – not just in traditional roles as nurses and support personnel but as weapon-toting frontline troops.” Perry, Tony, *Women on Iraq’s Front Lines*, *Los Angeles Times*, November 13, 2008. See also: <http://www.youtube.com/watch?v=DUo1yoU9lxs>

³⁰ See: <http://www.defense.gov/news/newsarticle.aspx?id=16391>

³¹ See: <http://www.military.com/news/article/spec-ops-needs-a-few-good-women.html>

³² P.L. 109-163; 119 Stat. 3251; January 6, 2006. As described in this law, “such a change may then be implemented only after the end of a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date on which the report is received.”

³³ The Army policy defines direct combat to include the closing with the enemy in order to “destroy or capture the enemy, or while repelling the enemy’s assault by fire, close combat, or counterattack.” [Emphasis added.] Headquarter, U.S. Department of the Army, 1992, p. 5.

³⁴ Harrell, Margaret C., et al., *Assessing the Assignment Policy for Army Women*, RAND, National Defense Research Institute, 2007: xvii.

³⁵ The Combat Action Badge recognizes soldiers who have engaged the enemy, or were engaged by the enemy during (continued...)

Submarines

Toward the end of the Clinton Administration, efforts were made to assign women to submarines.³⁶ However, language was contained in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that effectively halted these efforts. Essentially, this language prohibited the Navy from assigning women to submarines from May 10, 2000 forward until the Secretary of Defense submits to Congress written notice of such a proposed change and following a period of 30 days of “continuous session of Congress (excluding any day on which either the House of Congress is not in session). . . .”³⁷

Then-Secretary of Defense, Robert Gates, notified Congress on February 23, 2010 of a decision by the Navy to allow women to serve on nuclear submarines in the next year.³⁸ The first group of women selected for submarine training are expected to report to their submarines in late November or early December 2011.³⁹

Recent Commission Recommendations

The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009⁴⁰ contained language establishing the Military Leadership Diversity Commission. Among its duties, the Commission was to conduct a study and file a report regarding diversity issues in the Armed Forces with attention to the “establishment and maintenance of fair promotion and command opportunities for ethnic- and gender-specific members of the Armed Forces at the O-5⁴¹ grade level and above.”

During hearings held in 2010, Defense Department officials stated that they were looking at the assignment issue regarding women as part of their three-year cyclic review and expected to make their recommendations to their leadership within a few months.⁴²

In March, 2011, the Commission released its report, “From Representation To Inclusion: Diversity Leadership and the 21st-Century Military.”⁴³ Three of its recommendations are particularly relevant to the issue of women in the military:

(...continued)

combat operation. See: <http://www.army.mil/symbols/CombatBadges/action.html>

³⁶ Pentagon panel says women should serve on Subs, *CNN U.S.*, May 26, 2000.

³⁷ P.L. 106-398; 114 Stat. 1654A-136; October 30, 2000.

³⁸ Pentagon OKs lifting the ban on women in submarines, *Reuters*, February 23, 2010.

³⁹ Melia, Michael, Navy Prepares Submarines for 1st Female Officers, *Norfolk Virginian-Pilot*, July 25, 2011. See: P.L. 106-398; 114 Stat. 1654A-136; October 30, 2000.

⁴⁰ P.L. 110-417; 122 Stat. 4476; October 14, 2008; see §596.

⁴¹ Lieutenant Colonel for Army, Marine Corps and Air Force, and Commander for Navy and Coast Guard.

⁴² U.S. Congress, House, Armed Services Committee, Military Personnel Subcommittee, Military Personnel Legislative Priorities, Hearing, 111th Cong., 2nd Sess., Report No. 111-139, March 17, 2010: 19.

⁴³ Military Leadership Diversity Commission, 1851 South Bell Street, Arlington, VA, 22202. Although the Final Report was issued on-line on March 7, 2011, the routing letter from the Chairman to the President and Congress was dated March 15, 2011.

Recommendation 9

DOD and the Services should eliminate the “combat exclusion policies” for women, including the removal of barriers and inconsistencies, to create a level playing field for all qualified servicemembers. The Commission recommends a time-phased approach:

- Women in career fields/specialties currently open to them should be immediately able to be assigned to any unit that requires that career field/specialty, consistent with current operational environment.
- DOD and the Services should take deliberate steps in a phased approach to open additional career fields and units involved in “direct ground combat” to qualified women.
- DOD and the Services should report to Congress the process and timeline for removing barriers that inhibit women from achieving senior leadership positions.

Recommendation 18

As part of the accountability reviews, the Services, in conjunction with the Chief Diversity Officer (established in Recommendation 15), should conduct annual “barrier analyses” to review demographic diversity patterns across the military life cycle, starting with accessions....

b. The annual analyses should include

- accession demographics
- retention, command selection, and promotion rates by race/ethnicity and gender
- analysis of assignment patterns by race/ethnicity and gender
- analysis of attitudinal survey data by race/ethnicity and gender
- identification of persistent, group-specific deviations from overall averages and plans to investigate underlying causes
- summaries of progress made on previous actions.

Recommendation 20

... Congress should revise Title 10, Section 113, to require the Secretary of Defense to report annually an assessment of the available pool of qualified racial/ethnic minority and female candidates for the 3- and 4-star flag/general officer positions.

- The Secretary of Defense must ensure that all qualified candidates (including racial/ethnic minorities and women) have been considered for nomination of every 3- and 4-star position. If there were no qualified racial/ethnic minority and/or female candidates, then a statement of explanation should be made in the package submitted to the Senate for the confirmation hearings.⁴⁴

⁴⁴ Military Leadership Diversity Commission, Final Report, pp. 127, 129 and 130.

DOD Review

Sec. 535 of the Ike Skelton National Defense Act for Fiscal Year 2011⁴⁵ stated:

(a) REVIEW REQUIRED—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall conduct a review of laws, policies, and regulations, including the collocation policy, that may restrict the service of female members of the Armed Forces to determine whether changes in such laws, policies, and regulations are needed to ensure that female members have equitable opportunities to compete and excel in the Armed Forces.

(b) SUBMISSION OF RESULTS—Not later than April 15, 2011, the Secretary of Defense shall submit to the congressional defense committees a report containing the results of the review.

This language clearly establishes the concern for equal opportunities for women as the focus of the review. Notably absent in this language is any mention of the effects on military readiness such changes may produce.

In February 2012, the Office of the Under Secretary of Defense (Personnel and Readiness) released its report.⁴⁶ In the conclusion, it stated:

The Department intends to:

1. Eliminate the co-location exclusion from the 1994 policy;
2. As an exception to policy, allow Military Department Secretaries to assign women in open occupational specialties to select units and positions at the battalion level (for Army, Navy, and Marine Corps) whose primary mission is to engage in direct combat on the ground;
3. Based on the exception to the policy, assess the suitability and relevance of the direct ground combat unit assignment prohibition to inform policy decisions; and
4. Pursue the development of gender-neutral physical standards for occupational specialties closed due to physical requirements.

Under the first proposed change, the co-location policy will be eliminated and women serving in non-combat military jobs can be co-located with combatant units.

Second, women in jobs open to them can be assigned to combat units but only at the battalion (as opposed to the previous larger brigade) level.

Third, based on allowing co-location at the battalion level, an assessment of the suitability and relevance of the direct ground combat assignment prohibition can be made signaling that these proposed changes are not necessarily the last word in the consideration of the assignment of women.

⁴⁵ P.L. 111-383; 214 Stat. 4217; Jan. 7, 2011.

⁴⁶ U.S. Department of Defense, Office of the Under Secretary of Defense (P&R), Report to Congress on the Reviews of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces, February, 2012.

Fourth, the proposal recommends pursuing gender-neutral physical standards seemingly to make such standards a non-issue in terms of assignments to occupational specialties currently closed to women. The use of the term “gender-neutral physical standards” raises questions depending on how it is defined. A plain reading of the term suggests that men and women would be required to meet the same physical standards in order to be similarly assigned. However, in the past, the Services have used this and similar terms to suggest that men and women must exert the same amount of energy in a particular task, regardless of the work that is actually accomplished by either. Hypothetically speaking, if a female soldier carries 70 pounds of equipment five miles and exerts the same effort as a male carrying 100 pounds of equipment the same distance, the differing standards could be viewed as ‘gender-neutral’ because both exerted the same amount of effort, with differing loads. Such differing loads, in certain scenarios, may or may not matter, particularly in terms of ammunition, medical equipment, communications equipment, and medical supplies, commonly carried by foot soldiers. (According to a U.S. Army Report, a rifleman in Afghanistan can be expected to carry an average fighting load of 63 lbs. to an average Emergency Approach March Load of 127 lbs.⁴⁷)

The proposal allows commanders to co-locate women in open occupational specialties with ground combat units noting that the “[r]emoval of the co-location operating restriction responds to the current operational environment.” However, if assigning women in this manner becomes part of the force structure, the report does not explain what would happen in a different operational environment, such as large-scale, multiple linear battlefields, such as those seen in World War II. Further, it could be claimed that although the Services have flexibility, it can be argued that moving ahead in this manner may make the changes a *fait accompli* with little flexibility resulting and no intention of returning to the previous restrictions. In the current operational environment the policy has been successful according to DOD, which also shows that DOD has been in tacit violation of its own policies regarding co-location for some time.⁴⁸

The response to the proposed changes was somewhat muted.⁴⁹ Because these changes are relatively modest, some expressed disappointment that they did not go far enough.

(The report also stated that the Department is giving notice of the changes commencing the congressional review timeline required in Title 10, United States Code, sec. 652, which means these changes will become policy unless Congress takes action.)

The report noted that these changes will fall disproportionately on the Army and Marine Corps. Issues arising for the Navy, for the most part, are centered around berthing accommodations, particularly on submarines. As noted above, the Navy has already notified Congress of its intention to assign women to submarines and is well into the process of placing women on submarines. (This report notes that, on December 1, 2010, the Secretary of Defense notified Congress of the Navy’s intention to expend funds to reconfigure existing submarines to accommodate women.)

⁴⁷ U.S. Army Center for Army Lessons Learned, Task Force Devil Combined Arms Assessment Team (Devil CAAT), *The Modern Warrior’s Combat Load, Dismounted Operations in Afghanistan*, April-May 2003.

⁴⁸ “‘We all laughed at it,’ said one female Army Colonel, referring to the Feb. 9 change.... They are just letting us do what we’ve been doing for years. It hasn’t really changed anything,” said the Colonel, who asked not to be identified.” Tilghman, Andrew, *New Women-In-Combat Policy Opens Few New Doors*, *Army Times*, February 27, 2012: 12.

⁴⁹ Bumiller, Elisabeth *Pentagon Allows Women Closer to Combat, but Not Close Enough for Some*, *The New York Times*, February 9, 2012.

Congress has 30 days (as defined above) to review the report's recommendations. Congress may then decide to do nothing, as was the case recently with regard to allowing women to serve on submarines, or take any legislative actions it deems appropriate under its Constitutional authority. Some critics have viewed a Diversity Commission's recommendations as a foregone conclusion that represents the political interests of those in Congress who created it.

Should Women be Barred from Combat Positions?

Those who emphasize equal rights, responsibilities and women's abilities,⁵⁰ say women in the armed forces cannot advance to the top without combat experience. Some carry the argument further to say that women cannot be equal in society as long as they are barred from full participation in all levels of the national security system. In their view, modern weapons have equalized the potential for women in combat, since wars are less likely to be fought on a hand-to-hand basis, and have made it impossible to protect women from the destructiveness of combat; in any event, properly trained women would be able to fight successfully and exempting them from combat is not fair to men. Some note that equal access to combat would also require the equal responsibilities of registering for and being subject to the draft.⁵¹ In the Supreme Court decision in *Rostker v. Goldberg*, in the majority opinion, Justice William Rehnquist wrote "[t]he existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration. The purpose of registration was to prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them."⁵² It has been suggested that this issue can be made moot by terminating Selective Service registration.

Supporters of opening more areas to women note that they are already serving, fighting, and in some cases, dying in combat.⁵³ Critics contend that it is the military that is ignoring its own policy and thereby creating a *fait accompli* that puts women and the military mission at risk.⁵⁴

Those opposed to women in combat note that the progress of women is not the most important issue at hand. They contend that national security has been and would further be jeopardized because of the presence of women in the ranks. They note the Canadian experience in which women were recruited for the 16-week infantry training course which was identical to the men's course. The outcome was described as the 'high cost of recruiting women that yielded poor results.'⁵⁵ These critics note disruptions to cohesion and high rates of attrition for females in labor

⁵⁰ Bacon, Lance M., Odierno: "We Need Their Talent," *Army Times*, October 24, 2011. Odierno: ""This is about managing talent. We have incredibly talented females who should be in those positions. We have work to do within the [Department of Defense] to get them to recognize and change."

⁵¹ A Draft for Women?, *New York Post*, June 19, 2011.

⁵² *Rostker v. Goldberg*, 453 U.S. 57 (1981).

⁵³ Baldor, Lolita C., Associated Press, Yahoo.com, Death Highlights Women's Role in Special Ops Teams, *Yahoo.com*, October 25, 2011.

⁵⁴ Maurer, Kevin, The Army Is Recruiting Elite Women Soldiers, *The Washington Post Magazine*, October 30, 2011. "While Congress still bans women from serving in combat units, the [female] soldiers selected from this group will serve alongside the Army's most elite units on the battlefield." This article incorrectly stated that Congress bans women from serving in combat units.

⁵⁵ "Of the 60 women recruited for the Canadian Infantry since last year, only one has successfully completed the 16-week training program and is serving in the infantry, according to Cmdr. Judith Harper....", Moore, Molly, Canada Puts Women on Front Line:, *Los Angeles Times*, November 23, 1989. More recently, Israel expanded combat roles for (continued...)

intensive specialties due to lower average upper body strength and higher rates of stress fractures. Those opposed note that close combat situations have and continue to exist, especially in Afghanistan, and that there is a distinction between ‘returning fire’ and ‘offensive close combat.’

Since women themselves are divided on the issue,⁵⁶ one option is to permit women who meet the service standards (physical, training, etc.) to be assigned to combat positions, but that they should be sent into combat only if they volunteer for such missions. Critics contend that it would be unfair to permit women a choice that is not available to men, and that to make the choice available to both men and women would make it difficult for the services to function, especially in the event of war or national emergency.

Any changes proposed by the Services will likely be subjected to congressional scrutiny. Congress may accept any proposed changes or seek to subject such changes to certain limitations. Conversely, Congress may consider that any proposed changes remain too restrictive concerning the availability of combat roles for women.

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women with mixed results. Gil Ronen, “General Who Supported Women in Combat Says: ‘No More!’” *Israel National News*, July 23, 2011.

⁵⁶ Both men (53%) and women (53%) favor an expanded role for women in the military. See <http://www.cbsnews.com/stories/2009/08/15/opinion/polls/main5244312.shtml>. See also Dan Lamothe, “Marines Split on Women Joining Combat Units,” *Marine Corps Times*, April 19, 2011.